IN THE

Supreme Court of the United States

October Term, 1941.

No. —

THE UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA,
Executor of the Estate of CAROLINE G. CAUGHEY,
Petitioner,

v.

GUY T. HELVERING, Commissioner of Internal Revenue,
Respondent.

BRIEF IN SUPPORT OF PETITION

OPINION BELOW.

The opinion of the United States Circuit Court of Appeals for the Fourth Circuit was handed down on January 29th, 1942 (R. 21). This opinion reversed the decision of the United States Board of Tax Appeals, reported in 44 B. T. A. 385.

JURISDICTION

The judgment of the United States Circuit Court of Appeals for the Fourth Circuit sought to be reviewed was entered on January 29, 1942 (R. 27). The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended (28 U. S. C. 347, 43 Stat. 938).

STATUTES INVOLVED

Revenue Act of 1926, c. 27, 44 Stat. 9:

Sec. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

* * * * *

(3) The amount of all bequests, legacies, devises, or transfers, * * * to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, * * * or to a trustee or trustees, or a fraternal society order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, * * *. (U. S. C., Title 26, Sec. 412).

STATEMENT.

The facts are as set forth in the petition supra, pp. 1 to 4.

SPECIFICATION OF ERRORS

It is submitted that the United States Court of Appeals for the Fourth Circuit erred in the following particulars:

1. In holding that the remainder estate bequeathed to the National Girl Scouts, Inc. is not deductible as a charitable bequest.

2. In holding that the conditions involved rendered the value of the bequest unascertainable at the date of death.

ARGUMENT.

The conditions imposed upon the gift of the remainder do not render that gift problematical or its value unascertainable.

The opinion of the Lower Court is based on the premise that the bequest to the National Girl Scouts, Inc. is indefi-

nite and uncertain because of the following conditions imposed by the testatrix in her will:

1. The limited right of the Trustee to invade the principal for the benefit of the husband.

2. That upon the death or remarriage of the husband, and twenty years thereafter, the Girl Scouts are to receive the remainder estate provided that at each of such times they are still operating Rockwood Manor.

As to the first condition, the Lower Court stated that if that condition "was the only source of uncertainty in the pending case, we should hesitate to hold that the bequests of the residue are not deductible for estate tax purposes." There is ample justification for the Court's comment regarding this condition. In the decision of this Court in *Ithaca Trust Company* v. *United States*, 279 U. S. 151-154, the decedent gave the residue of his estate to his wife for life, and authorized the use from the principal of any sum "that may be necessary to suitably maintain her in as much comfort as she now enjoys." This Court held that that provision did not make the gifts of the remainder to charity so uncertain that the deduction of those gifts from the gross estate could not be allowed. In the instant case the provisions of decedent's will in this respect are considerably more restricted in that the invasion of principal is limited strictly to cases of illness, accident, or death requiring more than the net monthly payments for the proper care and comfort of the husband, and then only such additional sum as would be sufficient properly to care for the husband during his time of need. Further, the facts developed are that the husband has the use of the house, rent free, for his life; that his yearly expenses do not exceed $4,000.00; and that the yearly income payable to him exceeded the rate of $8,000.00 in each of the four years following decedent's death. Proper application of the decision of this Court in *Ithaca Trust Company, supra*, would not permit a decision that the condition imposed by the testatrix respecting invasion of principal for the benefit of her husband made the

bequests to the Girl Scouts so uncertain as to result in the disallowance of the deduction for charitable bequests. The Lower Court has cited the decision in *Gammons* v. *Hassett*, 1 Cir., 121 Fed. 2d 229. That case is not applicable here as the provision of the will there involved permitted the invasion of the principal to the extent "my said wife may at any time or from time to time need or desire." Such an authorization goes far beyond the restricted provision in the wills of the testatrix in this case and the testator in the case of *Ithaca Trust Company* v. *United States, supra.* To the extent that the Lower Court relied upon the first condition in support of its decision it has either failed to accept or misapplied the rule laid down in *Ithaca Trust Company* v. *United States, supra.*

The Lower Court, in its opinion, dwells upon the second condition and speculates at length upon the possibility or probability of the Girl Scouts continuing in possession of Rockwood Manor after the death or remarriage of the testatrix' husband and twenty years thereafter and upon this speculation it bases its conclusion that sufficient uncertainty surrounds the bequest to defeat its deductibility.

In *Ithaca Trust Company* v. *United States, supra,* this Court stated:

> "After the death of the wife there were bequests in trust for admitted charities. The case presents two questions the first of which is whether the provisions for the maintenance of the wife made the gifts to charity so uncertain that the deduction of the amount of those gifts from the gross estate under pp. 403 (a) (3), supra, in order to ascertain the estate tax, cannot be allowed. *Humes* v. *United States*, 276 U. S. 487, 494. This we are of opinion must be answered in the negative. The principal that could be used was only so much as might be necessary to continue the comfort then enjoyed. The standard was fixed in fact and capable of being stated in definite terms of money. It was not left to the widow's discretion. The income of the estate at the death of the testator, and even after debts and specific legacies had been paid, was more

> than sufficient to maintain the widow as required. There was no uncertainty appreciably greater than the general uncertainty that attends human affairs."

Applying the language "no uncertainty appreciably greater than the general uncertainty that attends human affairs" to the facts of this case it becomes apparent that there is nothing in the record nor in the opinion of the Lower Court that justifies its conclusion.

Decedent made a devise, to take effect immediately upon her death, of her country estate known as "Rockwood Manor." She attached to this devise the same conditions which are attached to the gifts of the remainder to take effect upon the death or remarriage of her husband and twenty years thereafter, yet there has never been any question as to the deductibility of this devise. Respondent has conceded it to be within the provisions of Section 303 of the Revenue Act of 1926, even though the title in the Girl Scouts would be divested in the event that they should abandon the property or fail to use it as a means of character building. The only distinction between the devise and the bequests of the remainder is that the possession of the devise is immediate and the possession of the remainder is postponed for a few years as to one-half and twenty years thereafter as to the balance. Failure to enjoy actual possession of the remainder could occur only as a result of the Girl Scouts taking the positive action of abandoning the property or ceasing to use it for character building purposes—which would amount to their refusal to accept a bequest of more than $300,000.00—or by the National Girl Scouts, Inc., ceasing to exist.

As was pointed out by the Board of Tax Appeals in its decision, the transfer of the remainder

> "* * * was to take place, certainly, upon the death or remarriage of John Wilson Caughey as to the first half, and 20 years from that date as to the second half, provided only that the Girl Scouts should not have abandoned Rockwood Manor, but should have continued to operate it for character building purposes. We shall

> assume that the respondent does not regard the possibility of the use of the property by the Girl Scouts for purposes other than 'character building' as a serious contingency. Actually, then, the Girl Scouts have only to remain in possession and operation of Rockwood Manor in order to qualify for the entire residue of the estate, after termination of the intermediate estates. Their duty is a passive and not an active one."

Under the facts and circumstances of this case, the only way in which the estate of the Girl Scouts in the remainder can reasonably be defeated is by the organization ceasing to exist. The decision of the Lower Court, therefore, is tantamount to saying that it must be assumed that it is unlikely the Girl Scouts will be in existence upon the death or remarriage of the husband, whose life expectancy at the time of testatrix' death was slightly more than six years, and twenty years thereafter. Such an assumption violates the rule enunciated by this Court in the case of *Ithaca Trust Company* v. *United States, supra,* in that it holds the uncertainty as to the future existence of the Girl Scouts to be "appreciably greater than the general uncertainty that attends human affairs."

For the reasons set forth, the Lower Court erred in reversing the decision of the Board of Tax Appeals, and it is respectfully submitted that the writ of certiorari should be issued as prayed.

UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, Executor, Estate of CAROLINE G. CAUGHEY, *Petitioner,*

By GEORGE E. HAMILTON,
GEORGE E. HAMILTON, JR.,
CHARLES D. HAYES,
LEO N. MCGUIRE,
Counsel for Petitioner.